

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 354 OF 2020

TRAVEL PARTNER.....APPLICANT

VERSUS

REVOCATUS MSHANE.....RESPONDENT

RULING

Date of last Order: 02/11/2020

Date of Ruling: 30/11/2020

Z.G.Muruke, J.

Applicant filed present review following ruling of this court in Misc Application number 521 of 2019 for restoration of Revision number 52/2019. Grounds of review are mainly two namely:

1. That there is an error on the face of Ruling when the Honourable Court observed that the advocate of the applicant in Misc Application 521 of 2019 failed to show how she is related to VAM Advocates for the reason that there was no any notice of representation in Revision No. 52 of 2019 while it is clear that at that time the applicant was not in position to respond to the same.
2. That there is an error on the face of ruling when the Honourable Court totally decided to base on the issue raised by the respondent's personal representative without affording the applicant's counsel an opportunity to reply on the same and thus contrary to the well-established principle in the case of ***John Morris Mpaki Versus National Bank of Commerce and Ngagalila Ngonyani, Civil Appeal No. 95 of 2013 (unreported)***.

Upon respondent filing necessary documents, case was set for hearing in which Miriam Ndesarua, represented applicant while respondent was being represented by Hamza Rajabu, Personal Representative of his own choice. In short applicant counsel argued this court to review her decision in Misc Application No. 521/2019 on account of failure by the court to give applicant right to address the issue of notice of representation raised by the court in cause of the ruling. Miriam Ndesarua argued further that, once issue is raised by the court, parties ought to have been given opportunity to address on the same, but none was done by this court. As a result is an error wanting this court to review her decision citing following cases to support her argument.

- (i) John Morris Mpaki Versus National Bank of Commerce and Galaila Ngonyani Civil Appeal No. 95/2003 High Court Dar es Salaam Registry (unreported)
- (ii) Abdallah Yahaya Vs. NNB Civil Appeal No. 20/2020. High Court Mwanza (unreported)
- (iii) Misc Labour Application number 500/2019 Nokia Solution Vs. Momtesa Lusinde Labour Division (Dar es Salaam unreported) and
- (iv) Article 13(6) of Constitutional of United Public of Tanzania.

Respondent representative on the other hand submitted that, Rule 43(a)&(b) of GN 106/2007 was not followed in relation to revision number 52/2019, thus court correctly held in that applicant counsel name was not in the notice of application, citing decision in Rev No. 351/2019 in **Hemedi A. Kibule Vs. Simba Plastic Company Limited** High Court Labour Division Dar es Salaam (unreported) to support his arguments.

Having heard both parties submission, it is true that, issue of Miriam Ndesarua not being in the notice of application in Revision number 52/2019 was raised by the court in the cause of composing ruling much as it was also raised indirectly by respondent counsel in their counter affidavit in an application for restoration of the dismissed revision. By not requiring parties to address issue of notice, of representation in revision number 52/2019 is fatal, on account of right to be heard by applicant counsel.

Right to be heard is one of fundamental principals of natural justice, failure of which vitiates proceedings. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without** being afforded a chance of being heard. The right to be heard is a value right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

To the best of my understanding, **the Principles** of natural justice should always be dispensed by the court, that is both parties must be heard on the application before a final decision. Failing which there is miscarriage of justice as it is wrong for the judge to impose an order on the parties and such order cannot be allowed to stand. **Implicit** in the concept of fair adjudication lie cardinal principles namely that no man shall be condemned unheard. Principles of natural justice must be observed by the court save where their application is excluded expressly or by

necessary implication. It is un-procedural for a court to give judgment against the defendant without giving him an opportunity of being heard. **Every judicial or quasi-judicial tribunal must apply the fundamental principles of natural justice and natural justice will not allow a person to be jeopardized in his person or pocket without giving him an opportunity of appearing and putting forward his case.** The issue of denial of the right to a hearing is a point of law which underline the proceedings the effect of which is to render a proceeding a nullity.

In the case of Ridge Vs. Baldwin [1963] 2 All ER 66, it was insisted that the consequence of the failure to observe the rules of natural justice is to render the decision void and not voidable. Official of the court must comply with the rules of natural justice when exercising judicial functions. Right to be heard was insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174.

As shown above, failure to hear a party to the proceeding is fatal to the proceedings. This court erred by not giving an opportunity to Miriam Ndesarua to address on the issue of Notice on revision to be restored. Thus, order that Miriam Ndesarua, was not in notice of application in revision number 52/2019 is reviewed.

As correctly argued by applicant counsel in Misc application number 521/2019 that there is illegality to be argued in dismissed revision number 52/2019, this reason alone, is sufficient ground for hearing the same. In totality, present application for review is allowed. Order in Misc application

number 521/2019 dismissing the same is reversed, thus allowed. Revision number 52/2019 is restored, same to be mentioned on 15th February, 2021. Ordered accordingly.



Z.G.Muruke

JUDGE

30/11/2020

Labour Court TZ.

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TRAVEL PARTNER APPLICANT

VERSUS

REVOCATUS MSHANE RESPONDENT

Date: 30/11/2020

Coram: Hon. S.R. Ding'ohi, DR.

Applicant:

For Applicant:

Mr. Eliaman Daniel, Advocate

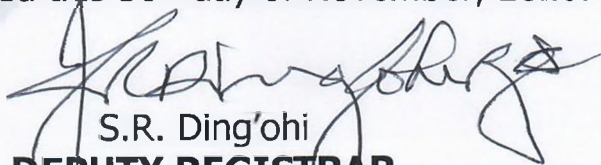
Respondent:

For Respondent:

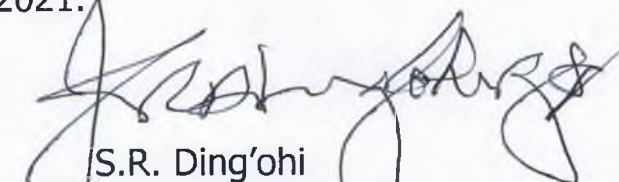
Mr. Antoni Kombe, PR.

CC: Halima

Court: Ruling delivered this 30th day of November, 2020.


S.R. Ding'ohi
DEPUTY REGISTRAR
30/11/2020

Order: Mention on 15/2/2021.


S.R. Ding'ohi
DEPUTY REGISTRAR
30/11/2020